



DEPARTMENT OF COMMERCE

International Trade Administration

[C-533-898]

Utility Scale Wind Towers from India: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of utility scale wind towers (wind towers) from India. The period of investigation is April 1, 2019, through March 31, 2020.

DATES: Applicable **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

FOR FURTHER INFORMATION CONTACT: David Crespo or Melissa Kinter, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3693 or (202) 482-1413, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 2021, Commerce published the *Preliminary Determination* of the countervailing duty (CVD) investigation, which aligned the final determination in this CVD investigation with the final determination in the companion antidumping duty investigation of wind towers from India.¹ Commerce invited interested parties to comment on the *Preliminary Determination*. On July 20, 2021, we received case briefs from the Government of India, Vestas Wind Technology India Private Limited (Vestas); Anand Engineering Products Private Limited,

¹ See *Utility Scale Wind Towers from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 86 FR 15897 (March 25, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

Windar Renewable Energy Private Limited, and GRI Towers India Private Limited (collectively, the tollers); and the Wind Tower Trade Coalition (the petitioner).² On July 27, 2021, we received rebuttal briefs from Vestas, the tollers, and the petitioner.³ On September 1, 2021, we held a public hearing at the request of Vestas, the tollers, and the petitioner.⁴

A summary of the events that occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, are discussed in the Issues and Decision Memorandum.⁵

Scope of the Investigation

The products covered by this investigation are wind towers from India. For a complete description of the scope of the investigation, *see* Appendix I.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

² See Petitioner's Letter, "Utility Scale Wind Towers from India: Petitioner's Case Brief," dated July 20, 2021; GOI's Letter, "CVD Investigation – Utility Scale Wind Towers from India: Case Brief on Behalf of Government of India," dated July 20, 2021; Vestas's Letter, "Utility Scale Wind Towers from India: Case Brief," dated July 20, 2021; and Tollers' Letter, "Certain Utility Scale Wind Towers from India (C-533-898): Case Brief on Behalf of Tolling Service Providers," dated July 20, 2021.

³ See Petitioner's Letter, "Utility Scale Wind Towers from India: Petitioner's Rebuttal Brief," dated July 27, 2021; Vestas's Letter, "Utility Scale Wind Towers from India: Rebuttal Brief," dated July 27, 2021; and Tollers' Letter, "Certain Utility Scale Wind Towers from India (C-533-898): Rebuttal Brief on Behalf of Respondents/Tolling Service Providers," dated July 27, 2021.

⁴ See Hearing Transcript, "Countervailing Duty Investigation on Utility-Scale Wind Towers from India," dated September 1, 2021.

⁵ See Memorandum, "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Utility Scale Wind Towers from India," dated concurrently with, and hereby adopted by this notice (Issues and Decision Memorandum).

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).⁶

Methodology

Commerce conducted this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient, and that the subsidy is specific.⁷ For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

As discussed in the Issues and Decision Memorandum, because several respondents did not act to the best of their ability in responding to our requests for information, we drew adverse inferences, where appropriate, in selecting from among the facts otherwise available, pursuant to sections 776(a) and 776(b) of the Act. The respondents Naiks Brass & Iron Works, Nordex India Pvt., Prommada Hindustan, Suzlon Energy, Vinayaka Energy Tek, Wish Energy Solutions Pvt Ltd, and Zeeco India Pvt. Ltd. did not respond to Commerce’s quantity and value questionnaire, and we have continued to use an adverse inference in our selection of facts available for determining the subsidy rates for these companies, pursuant to section 776(d) of the Act. For further information, see the section “Use of Facts Otherwise Available and Adverse Inferences” in the accompanying Issues and Decision Memorandum.

Changes Since the Preliminary Determination

⁶ See GRI Towers’ Letter, “Certain Utility Scale Wind Towers from India (C-533-898): Submission of In-Lieu-Of-Verification (ILOV) Questionnaire Response – GRI India,” dated July 13, 2021; Vestas’s Letter, “Utility Scale Wind Towers from India: Response to the In Lieu of On-site Verification (ILOV) Questionnaire,” dated July 13, 2021; and Windar’s Letter, “Certain Utility Scale Wind Towers from India (C-533-898): Submission of In-Lieu-Of-Verification (ILOV) Questionnaire Response – Windar India,” dated August 31, 2021.

⁷ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

Based on our review and analysis of the comments received from parties and our verification findings, we made certain changes to the subsidy rate calculations for Vestas. For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

In accordance with section 705(c)(5)(A) of the Act, we continue to assign the countervailable subsidy rate calculated for Vestas as the all-others rate applicable to all exporters and/or producers not individually examined.⁸

Final Determination

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we calculated an individual estimated subsidy rate for Vestas. We determine that the following total estimated net countervailable subsidy rates exist:

Producer/Exporter	Percent <i>Ad Valorem</i>
Vestas Wind Technology India Private Limited	2.25
Naiks Brass & Iron Works*	397.70
Nordex India Pvt.*	397.70
Prommada Hindustan*	397.70
Suzlon Energy*	397.70
Vinayaka Energy Tek*	397.70
Wish Energy Solutions Pvt Ltd*	397.70
Zeeco India Pvt. Ltd.*	397.70
All Others	2.25

*Rate based on adverse facts available

Disclosure

We intend to disclose to interested parties the calculations and analysis performed in this final determination within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

⁸ *See Preliminary Determination.*

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination*, and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, Commerce instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section, that were entered, or withdrawn from warehouse, for consumption on or after the date of publication of the *Preliminary Determination* in the *Federal Register*. In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after July 23, 2021, but to continue the suspension of liquidation of all entries from March 25, 2021 through July 22, 2021.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order, reinstate the suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of wind towers from Indonesia no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that material injury or threat of material injury does exist, Commerce will issue a

CVD order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the “Continuation of Suspension of Liquidation” section.

Notification Regarding Administrative Protective Orders

In the event the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: October 6, 2021.

Christian Marsh,
*Acting Assistant Secretary
for Enforcement and Compliance.*

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.*, where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.*, flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with non-subject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.*, accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Use of Facts Otherwise Available and Adverse Inferences
- IV. Subsidies Valuation Information
- V. Analysis of Programs
- VI. Analysis of Comments
 - Comment 1: Whether Commerce Should Apply Adverse Facts Available (AFA) to Vestas Wind Technology India Private Limited (Vestas)
 - Comment 2: Whether the Advance Authorization Program (AAP) is Tied to Non-Subject Merchandise
 - Comment 3: Whether Commerce Should Revise its Benefit Methodology for the Duty Drawback (DDB) Program
 - Comment 4: Whether Commerce Unlawfully Cumulated Vestas's Benefits with the Benefits of its Tollers
 - Comment 5: Whether the Merchandise Export Incentive Scheme (MEIS) Program is Tied to Non-Subject Merchandise
 - Comment 6: Whether the Provision of Land for Less Than Adequate Remuneration (LTAR) by the Gujarat Industrial Development Corporation (GIDC) is Specific and Confers Countervailable Benefits
 - Comment 7: Whether the Provision of Water for LTAR Conferred a Benefit
 - Comment 8: Whether Commerce Correctly Attributed Benefits for the Export Promotion of Capital Goods (EPCG) Program
 - Comment 9: Whether the AAP and DDB Programs are Countervailable under the Agreement on Subsidies and Countervailing Measures (SCM Agreement)
 - Comment 10: Whether Commerce Correctly Applied AFA to the Government of India (GOI)
 - Comment 11: Whether Commerce Correctly Initiated New Subsidy Allegations (NSAs)
- VII. Recommendation